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Nos. 07-21 & 07-25

In The Supreme Court of the United States

WILLIAM CRAWFORD, *et al.*,

Petitioners,

v.

MARION COUNTY ELECTION BOARD, *et al.*,

Respondents.

INDIANA DEMOCRATIC PARTY, *et al.*,

Petitioners,

v.

TODD ROKITA, *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF *AMICUS CURIAE* EVERGREEN FREEDOM FOUNDATION IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether an Indiana statute mandating that those seeking to vote in-person produce a government-issued photo identification violates the First and Fourteenth Amendments to the United States Constitution.

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INTEREST OF *AMICUS CURIAE*

The Evergreen Freedom Foundation, founded in 1991, is a non-partisan, public policy research organization with 501(c)(3) status, based in Olympia, Washington.[1] The Foundation's mission is to advance individual liberty, free enterprise, and limited, accountable government. The Foundation advocates reforms to increase election security, transparency and accountability through its Voter Integrity Project, both in Washington state and nationwide. These reforms are based on an extensive investigation of Washington's election system by Foundation staffers, who have been asked to testify on their findings and the resulting recommendations by county councils, state legislative committees, the congressional Committee on House Administration, and national policy organizations such as the American Legislative Exchange Council and the National Freedom of Information Coalition. The Foundation is routinely consulted by state and national media for information and opinions on election reform topics.

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[1] The parties have filed letters consenting to the filing of any *amicus curiae* brief with the Clerk of the Court. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or counsel, made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

The State of Indiana has imposed a reasonable, nondiscriminatory restriction on the voting process in order to advance two important interests: the integrity of the election process and the electorate's confidence in election security. This brief examines both interests and the extent to which they justify a photo identification law.

This Court has recognized that security and confidence are compelling interests. States are authorized to regulate the "times, places, and manner" of holding elections, and this encompasses the protection of voters, prevention of fraud or corruption, and any other safeguards necessary for the orderly conduct of elections.

Voter fraud is a serious problem in U.S. elections. Panels of national experts, academic research, the Department of Justice and evening news reports all confirm its existence. The difficulty of apprehending fraudulent voters, the rarity of prosecutions and bloated voter registration rolls all contribute to the potential for fraud. And even isolated voter fraud can affect close elections, causing public confusion, delayed results and drawn-out legal contests. Additionally, each fraudulent vote dilutes a legitimate voter's ballot, a harm that is nearly impossible to remedy after the fact. Therefore, states can and should adopt preemptive measure to secure elections against voter fraud. Photo identification requirements secure elections at the most basic level: they ensure that

only legitimate voters vote. The State of Indiana was therefore justified in using this method to combat voter fraud in the type of voting used by ninety percent of its voters.

Ensuring ballot integrity is compelling, but preserving public confidence in the election process is equally important. Citizen participation in our form of representative democracy is critical, and voter fraud (or even the appearance thereof) harms lawful participation. Voters who recognize that ballots are not secure lose confidence in the conduct of elections. Rather than participating in a farce, honest citizens decline to vote, and lack confidence in political leaders appointed through our electoral process. Confidence in the election system, once lost, is extremely difficult to restore. Research suggests that photo identification laws enhance public confidence in election security because voters believe showing photo identification helps prevent fraud. Thus, Indiana is justified in requiring photo identification in order to preserve and build public confidence.

Indiana is not alone in advancing election security and voter confidence through photo identification requirements. Many other states, concerned with voter fraud or the appearance of corruption, have passed photo identification laws or are considering measures similar to Indiana's law.

ARGUMENT

I. INDIANA HAS A SPECIFIC, COMPELLING STATE INTEREST IN PREVENTING VOTER FRAUD

Far from being a "nonexistent problem," voter fraud is a substantiated danger that can severely harm an election system. Indiana had a compelling, specific state interest in enacting a verification requirement to protect against fraud in the type of voting used by the vast majority of its citizens.

A. States have a compelling interest in securing their election process.

A state's authority to regulate the conduct of elections is found in Article I Section 4 of the U.S. Constitution: "The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof. . . ." This Court has held that "times, places, and manner" encompasses regulations "in relation to . . . protection of voters, prevention of fraud and corrupt practices . . . in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary to enforce the fundamental right involved." *Smiley v. Holm*, 285 U.S. 355, 363 (1932). More recent cases echo this interpretation. In *Burdick v. Takushi,* 504 U.S. 428, 441 (1992), the Court agreed that states must structure the electoral process "to maintain the integrity of the democratic system" (quoting *Anderson v. Celebrezze,*

460 U.S. 780, 788 (1983)). In other election-related decisions the Court termed this interest in preserving the integrity of the elections process a "compelling interest." *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 231 (1989); *American Party of Texas v. White*, 415 U.S. 767, 783 (1974).

B. Voter fraud is a significant threat to election integrity, even in small amounts, because of the impact it can have on close elections.

Extremely close elections happen often in local, state and national elections. When they happen, the results are closely scrutinized by candidates, parties, the media and the public. If the margin of victory in a close election partly or wholly consists of illegal ballots, the outcome of the election is thrown in doubt and the effect upon the election system can be very damaging.

While the Petitioners have attempted to downplay the amount of voter fraud that occurs, the severity of fraud should not be measured by the total number of ballots cast, but by the margin of victory in a race. That calculation reveals that voter fraud can quickly become a major problem, even if the actual number of fraudulent ballots is only a small percentage of the total votes.

Washington state's gubernatorial election of 2004 illustrates the ill effects of fraudulent ballots in a close race. Republican candidate Dino Rossi won the

governor's seat in the initial vote count by 261 votes out of 2.8 million tabulated. State rules required a recount, which Mr. Rossi also won by 42 votes. A second recount was conducted by hand at the request of the losing candidate, Democrat Christine Gregoire. She won by a total of 133 votes. Court's oral decision, *Borders v. King County*, No. 05-2-00027-3, at 9 (Wash. Super. Ct. 2005).[2]

During this recount process, reports of fraudulent ballots and miscounted votes started to circulate among party activists and the media. Soon after the election was certified Mr. Rossi filed an election contest action, alleging that the accurate results of the election could not possibly be known due to the large numbers of fraudulent ballots. *Borders v. King County*.

The trial court found that "1,678 illegal votes were cast," over thirteen times the margin of victory in the race. *Id.* at 8.[3] Despite this finding, the court

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[2] *Available at* http://www.secstate.wa.gov/documentvault/CourtsOralDecision-629.pdf.

[3] See Brief of the Petitioner Indiana Democratic Party at 47. Petitioner claims there were only 19 instances of voter impersonation fraud in Washington's 2004 governor's race, and that none would have been prevented by a photo identification requirement. This is a gross understatement. The court in the election contest found there were at least 24 instances of voter impersonation, and in another 252 instances provisional or regular ballots were illegally cast for a voter with missing or unverified registration information. *Borders v. King County*, page 8. A photo identification requirement would have greatly

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was unable to determine which gubernatorial candidate these votes were credited to, and therefore could not overturn the results of the race. *Id.* at 10. So while the number of illegal votes was small in comparison to the total votes cast, it was enormous in connection to the results of the election. As detailed in Section II, this outcome not only made it impossible for voters to know who really had won the election, but caused a plunge in voter confidence in Washington state that persists to this day.

Washington is not alone in having razor-thin elections. In 2001 a gathering of election experts headed by former president's Jimmy Carter and Gerald Ford found:

> In presidential elections since 1948, nearly half of all the states have had at least one occasion when the winner of their electoral votes was decided by less than one percent of the vote. In 1948 Truman carried California and Illinois each by margins of less than 1%; had he lost both states the election would have gone to the House of Representatives for a decision. In 1960 the winner in six

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eased concerns over the failure to verify the identity of the voters who cast these ballots. A photo identification requirement would also have made a difference in other instances of in-person voter fraud in the 2004 race that were discovered after the election contest ended. See Memorandum from Jefferson County Auditor to Jefferson County Prosecutor Juelanne Dalzell, March 7, 2006, *available at* http://soundpolitics.com/JeffersonDoubleVoters20060322.pdf.

> states was decided by this tiny margin, more than enough to have changed the outcome. In 2000 the winners in four other states, in addition to Florida, was decided by less than 1% of the vote. In a given election, past experience indicates a 90% chance that at least one state will have a presidential election decided within such a 1% technological margin of error. Very close elections are also common in elections for other federal offices or for governor. Since 1948 half of the states have had at least one senatorial race decided by less than 1% of the vote; some have had as many as three such narrowly decided senatorial races.[4]

No state is immune to close elections. States have a compelling interest in avoiding the public confusion, delayed results and drawn-out legal battles that occur when a close election is tainted by illegal ballots.

Further examples of this can be seen in recent elections in Indiana, Tennessee and Alabama. A hotly-contested mayoral race in Indiana was reversed by the Indiana Supreme Court in 2004 because the incumbent had engineered the casting of hundreds of illegal ballots in his favor. *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004). A Tennessee state senator

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[4] National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process*, at 51, August 2001, *available at* http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf.

elected in 2005 by 15 votes was ousted after election officials found a number of illegal ballots had been cast in one Memphis precinct.[5] And after a year-long legal battle, a 2004 mayoral race in Greensboro, Alabama was overturned after it was discovered hundreds of illegal ballots had been cast for the apparent victor. *Washington v. Hill*, 960 So.2d 643 (Ala. 2006).

Even when an election is not overturned by illegal ballots, as in the Washington gubernatorial race, close scrutiny by the press magnifies the public perception of fraud and the damage to the election. One reporter for the *Seattle Times* wrote over one hundred stories on the controversy in the months following the 2004 election, and he was only one of many reporters from a dozen newspapers following the story.[6]

C. States can and should take preventative and preemptive measures to secure elections against voter fraud.

In 1982 this Court held it would not "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil

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[5] Travis Loller, *Senate votes Ford out*, THE TENNESSEAN, April 20, 2006.

[6] David Postman, Remarks at the 2007 NFOIC Annual Summit session on Election Transparency (May 11, 2007), audio transcript *available at* www.tvw.org.

feared." *Federal Election Commission v. National Right to Work Committee,* 459 U.S. 197, 210 (1982). While that case dealt with preventing campaign finance corruption, legislatures must make the same type of determination in attempting to prevent corruption in the election process. States should not have to wait until voter fraud appears in their own backyard before addressing it. Indiana chose to preemptively counteract the danger of voter fraud by enacting a photo identification requirement.[7] This decision was not made in a vacuum, but was done based on the bad experiences of other states and the recommendations of election experts. *Crawford v. Marion County Election Board,* 472 F.3d 949, 953 (7th Cir. 2007). Indiana also followed the lead of Congress's mandate for voter identification in the 2002 Help America Vote Act, just taking it one step further. 42 U.S.C. § 15483(b) (2002).

Washington state is a good example of why a state should follow well-thought-out recommendations to improve election security, even with no immediate crisis.

Washington state allows voters to choose a "permanent absentee" status, meaning a ballot will automatically be mailed to them prior to every election. This places great dependence on the accuracy of the county voter rolls, since counties must keep up with voter status changes without any subsequent

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[7] Indiana Senate Enrolled Act 483 (2005).

input from voters. In 2006, in response to the requirements of HAVA, Washington created a statewide voter database and began checking it for duplicates, felons and deceased voters. RCW 29A.08.651. In the first year nearly 185,000 ineligible registrations were removed from the rolls, many of whom were on the rolls during the 2004 gubernatorial race.[8]

Back in 2001 the Carter-Ford Commission had recommended states create a statewide voter roll and require ID for voter registrations.[9] If Washington had acted on this recommendation in 2002, as requested by its Secretary of State, there's little doubt there would have been fewer illegal ballots in the 2004 gubernatorial race.[10]

In a more distant Washington election controversy, this Court examined the constitutionality of a state law requiring minor party candidates to receive at least one percent of all votes cast for their office in the primary election in order to be on the general election ballot. *Munro v. Socialist Workers Party*, 479

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[8] Office of the Washington Secretary of State, *State's first consolidated list of registered voters combats voter fraud*, February 20, 2007, *available at* http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d.

[9] See *To Assure Pride and Confidence in the Electoral Process*.

[10] Office of the Washington Secretary of State, *Statewide Voter Registration System Adopted*, March 12, 2002, *available at* http://www.secstate.wa.gov/office/osos_news.aspx?i=eO0fOXxC0uvWrOQMi%2ffBPw%3d%3d.

U.S. 189 (1986). The state enacted the law to prevent voter confusion, but the plaintiffs argued the state had no interest due to a lack of any evidence of such confusion. Reinforcing a state's authority to preemptively enact security measures, this Court stated, "Legislatures . . . should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively. . . ." *Id.* at 195. Preventing such action, the Court said, would "necessitate that a State's political system sustain some level of damage before the legislature could take corrective action." *Id.* Far better to allow a state to act first to prevent damage, as Indiana did with its photo identification requirement.

D. Errors in a state's voter roll make voter fraud easier, and increase the need for strong identity verification requirements.

Indiana's voting roll is full of ineligible voters and data errors, judging by the district court's finding that there are substantially more registrations on the roll then registered voters in the state. *Indiana Democratic Party v. Rokita*, 458 F.Supp.2d 775 (S.D. Ind. 2006). This problem has also plagued other states, including Washington. After two years of database cleanup and the removal of over two hundred thousand ineligible registrations, Washington's

Secretary of State is still finding new types of errors.[11] When Indiana legislators enacted the photo identification requirement in 2005 the state voter database was still a work in progress,[12] and even though Indiana officials have agreed to a settlement with the Department of Justice requiring them to clean up the rolls, it will take years to fully accomplish.[13]

Election researchers who have studied the accuracy rates of voter rolls and related databases conclude, "states must account for, and avoid compounding, the unavoidable limitations of databases and record matching procedures."[14] A federal district court in Washington state agreed with this warning, striking down a state law requiring voter registration information to match a drivers' license or Social Security Administration record. The court thought database errors created too great a risk of preventing eligible voters from registering. *Washington Association of*

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[11] See *State's first consolidated list of registered voters combats voter fraud, supra.*

[12] Wanda Burnett, *Voting process upgraded in county, state*, VERSAILLES REPUBLICAN, Dec. 29, 2005.

[13] U.S. Department of Justice, *Justice Department Announces Agreement to Protect the Integrity and Accuracy of Indiana's Voter Registration List*, June 27, 2006, *available at* http://www.usdoj.gov/opa/pr/2006/June/06_crt_398.html.

[14] Justin Levitt, et al., *Making the List: Database Matching and Verification Processes for Voter Registration*, Brennan Center for Justice, March 24, 2006. The author of the study submitted an *amicus curiae* brief in support of the Petitioners.

Churches v. Reed, 492 F.Supp.2d 1264 (W.D. Wash. 2006).

A Milwaukee law enforcement task force investigating alleged voter fraud after the 2004 general election found that database errors also make it tough to uncover election crimes: "Simply put: it is hard to prove a bank embezzlement if the bank cannot tell how much money was there in the first place. Without accurate records, the task force will have difficulty proving criminal conduct beyond a reasonable doubt in a court of law."[15]

Indiana's dilemma is just as severe. The Secretary of State is working to clean up the state's voter roll, but the task will take much time and effort. Even when completed, the data in the voter roll will never be one hundred percent accurate. Indiana, therefore, is justified in strengthening ballot security to ensure database errors do not lead to voter fraud, as they did in Milwaukee and Washington.

E. Signature verification and criminal penalties are inadequate to prevent voter fraud.

Prior to enactment of the photo identification requirement, Indiana's poll voting security consisted

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[15] *Preliminary Findings of Joint Task Force Investigating Possible Election Fraud*, May 10, 2005, *available at* http://www.wispolitics.com/1006/electionfraud.pdf.

of signature verification and the deterrence effect of criminal penalties for voter fraud. HAVA added a requirement that first-time voters who register by mail must produce a piece of voter identification ranging from a drivers' license to a copy of a utility bill. 42 U.S.C. § 15483(b). While Petitioners claim these security measures are adequate, making a photo identification requirement unnecessary, the experience of other states has shown otherwise.[16]

1. The complexity of signature verification and non-uniform application make it an inadequate security measure.

Signature verification is inadequate because it's not uniform, and because doing it properly requires extensive forensic training not possessed by most poll workers. Indiana Code § 3-11-8-25.1(i) states, "In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration. . . ." Poll workers only compare signatures if there is "doubt" about a voter's identity, making application of the security measure spotty and subjective.

Even if application were uniform, the high level of knowledge required to properly verify signatures, the fact that few poll workers possess this knowledge

[16] Pet. at 42.

and the tight time constraints of an election reduces the effectiveness of signature verification.

These limitations were highlighted in Washington state's 2004 election when many illegal ballots were cast that should have been stopped by the signature verification process. In dozens of instances, ballots with signatures that clearly didn't match registration records were counted. This failure is likely explained by a post-election review from a certified Washington member of the National Association of Document Examiners, who warned that "comparing signatures to determine authenticity is an established field of forensic science."[17] Temporary election workers with just a few hours of training who review a high volume of ballots in a short time period cannot detect all non-matching signatures.

This differs from Indiana's absentee ballot system, where the limited numbers of mail ballots allow experienced personnel extra time to check signatures, uniform signature checking is required by law, and the absentee ballot request form provides a secondary matching source. Ind. Code § 3-11-10-4(a). But for the ninety percent of Indiana voters who use a polling place, signature checking is an inadequate security measure.[18]

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[17] Hannah McFarland, *Comparing signatures is a science*, SEATTLE P-I, Nov. 1, 2005.

[18] Indiana Secretary of State's Office, *2006 General Election Turnout and Registration*, November 7, 2006, *available at* http://

(Continued on following page)

2. The rarity of prosecutions make criminal penalties an inadequate deterrent.

The deterrence effect of criminal penalties is also inadequate, because tight resources and other priorities make prosecutions too rare. As Judge Posner stated in the appellate decision, "the absence of prosecutions is explained by the endemic underenforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events) and by the extreme difficulty of apprehending a voter impersonator." *Crawford,* 472 F.3d at 953.

The election of 2004 in Washington state demonstrated this problem. Based on extensive research from the state Democratic and Republican parties, the judge concluded that 1,401 felons cast illegal ballots in the election. *Borders v. King County,* at 9. Not one of these felon voters was prosecuted.[19] Even in blatant cases, such as when the Thurston County (Olympia) prosecutor declined to file charges against a felon voter who was both a disbarred attorney and a former political consultant.[20]

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www.in.gov/sos/elections/2006%20Municipal%20Registration%20and%20Turnout.pdf.

[19] Victor Joecks, *Façade of Enforcement*, Evergreen Freedom Foundation, April 21, 2006, *available at* http://www.effwa.org/enforcement.

[20] Brad Shannon, *Felon voter won't be charged*, THE OLYMPIAN, March 30, 2006.

One year after the election contest was over; twenty-five more complaints of double-voting were filed with election officials. Prosecutors investigated the complaints, but declined to prosecute. Not because the complaints were without merit, however. King County's (Seattle) prosecutor agreed that almost all of the complaints appeared to be instances of illegal double-voting, but explained that while "the integrity of the voter rolls is important, we must balance that with the myriad of public safety demands . . . We will continue to investigate blatant cases of voter fraud, while also exercising prosecutorial discretion. . . ."[21]

Prosecuting only "blatant" election crimes is not a preference limited to local law enforcement officials. United States Attorneys, who are responsible for prosecuting federal election crimes, also can and do choose to ignore individual instances of voter fraud. John McKay, former U.S. Attorney for Western Washington, chose not to prosecute any of the illegal votes in the 2004 election because, as he later told a reporter, "[I want] conclusive forensic evidence of a conspiracy. . . ."[22] With no evidence of a widespread conspiracy in Washington, he didn't prosecute anyone.

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[21] Letter from Dan Satterberg, Chief of Staff, Office of the Prosecuting Attorney, King County, to Jonathan Bechtle, Director, Voter Integrity Project, January 31, 2007.

[22] Stefan Sharkansky, *John McKay, In His Own Words,* SOUND POLITICS, May 21, 2007, *available at* http://www.soundpolitics.com/archives/008649.html.

And while the current version of the Department of Justice manual on election crimes would have disagreed with his decision, the version in place in 2004 cautioned against prosecuting individual voter fraud.[23]

A 2006 report on voter fraud commissioned by the U.S. Election Assistance Commission included a series of interviews with election experts who were asked about election crime prosecutions. The general consensus was, "voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement . . . have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law."[24] So it's not surprising that the only election crime prosecutions in Indiana's recent history were for a large-scale conspiracy with many sordid details that was difficult to ignore. It also bolsters Judge Posner's contention that the lack of prosecutions for voter fraud in polling places should not be construed to mean there is no danger of fraud. *Crawford,* 472 F.3d at 953.

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[23] Paul Kiel, *New DOJ Manual Adopts Administration's Voter Fraud Focus*, TPM MUCKRAKER, July 27, 2007.

[24] Job Serebrov and Tova Wang, *Election Crimes: An Initial Review and Recommendations for Future Study,* U.S. ELECTION ASSISTANCE COMMISSION, December 2006, at 9.

3. The voter identification requirement in HAVA is inadequate because it is easily exploited.

Indiana was justified in determining that its polling place security measures of signature verification and criminal penalties were not adequate. Could the state, however, have satisfied its compelling interest in securing its elections by relying on the less-restrictive HAVA voter identification requirements? 42 U.S.C. § 15483(b). Those requirements allowed voters to use non-picture identification like a bank statement, a paycheck, or a utility bill that may be easier for voters to acquire than photo identification. *Id.* The experience of Washington again reveals why a state would be justified in exceeding HAVA's minimal standard.

In 2006, a grandmother living near Seattle named Jane Balogh grew concerned about the insecurity of Washington's election system. As a public demonstration of the problem, she registered her dog to vote. Under the HAVA requirements she had to send voter identification with the mailed-in registration form. *Id.* She did so with a utility bill that she forged to show her dog's name. This was Balogh's first offense, and she had no specialized training or experience in forging documents. But her dog's registration was accepted, and he was given the opportunity to vote in three elections before Balogh made her

action public.[25] Unlike photo identification, a utility bill or paycheck is too easy to forge to constitute an adequate security measure.

F. Voter fraud results in the dilution of legal ballots, a harm very difficult to remedy after the fact.

In *Reynolds v. Sims* the Court equated vote dilution with voter disenfranchisement: "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." 377 U.S. 533, 555 (1964).

The Court has continued to recite this theme, holding in one case "Not only can this right to vote not be denied outright, it cannot, consistently with Article I . . . be diluted by stuffing of the ballot box," and in another case, "the elector's right intended to be protected is not only that to cast his ballot but that to have it honestly counted." *Westberry v. Sanders,* 376 U.S. 1, 17 (1964); *U.S. v. Saylor,* 322 U.S. 385, 388 (1944). See also *Purcell v. Gonzalez,* ___ U.S. ___, 127 S.Ct. 5 (2006).

The Petitioners greatly emphasized the importance of not burdening even one voter, but neglect the

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[25] Keith Ervin, *Woman registers dog to vote; prosecutors growl*, SEATTLE TIMES, June 22, 2007.

flip side.[26] It's equally important, if not more so, to prevent even one voter's legal ballot from being diluted by voter fraud. If a voter cannot comply with a pre-voting requirement like photo identification a state can supply an alternative, as Indiana has done with provisional and absentee ballots. But once an illegal ballot has been cast, voter secrecy laws make it nearly impossible to find and retract that ballot. In Washington state's 2004 election, for example, the judge presiding over the election contest could only determine how four of the 1,678 illegal ballots were cast, thus diluting the legal votes of 1,674 unsuspecting Washington residents. *Borders v. King County,* at 8.

The East Chicago mayoral race tainted by voter fraud is another example of how difficult it is to identify and remove illegal ballots once they are cast. As the trial court described it:

> Petitioner Pabey, his legal counsel, and amateur investigators faced a herculean task of locating and interviewing absentee voters, visiting multi-family dwellings and housing projects, gathering and combing through voluminous election documents, and analyzing, comparing, sifting and assembling the information necessary to present their case . . . In short, the time constraints that govern election contests, primarily designed to serve important interests and needs of election

[26] Pet. at 33.

> officials and the public interest in finality, simply do not work well in those elections where misconduct is of the dimension and multi-faceted variety present here. *Pabey*, 816 N.E.2d at 1146.

While this was absentee ballot fraud, the difficulty would have been no less with poll ballots. In fact, it may have been worse, since Pabey would have had to rely on hearsay from poll workers instead of having absentee ballot request forms to use in tracking down illegal votes.

Because of the compelling importance of preventing vote dilution, and the near impossibility of reversing its effects, Indiana is justified in requiring a pre-vote security measure like photo identification to prevent illegal votes from being cast in the first place.

G. A state's interest in election integrity does not require it to address all types of voter fraud at the same time.

Appellants argue that Indiana's enactment of a photo identification law is not justifiable because it does not also address absentee voting.[27] States need not, however, apply reform equally at the same time.

In the 1955 case of *Williamson v. Lee Optical of Oklahoma*, this Court stated, "Evils in the same field may be of different dimensions and proportions,

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[27] Pet. at 52.

requiring different remedies . . . Or the reform may take one step at a time, addressing itself to the phase of the problem which seem most acute to the legislative mind." 348 U.S. 483, 489 (1955). In later cases the Court reaffirmed this view, holding that a "legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked," and "that a legislature need not 'strike at all evils at the same time.'" *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 808 (1969).

Indiana chose to enact a reform recommended by election experts[28] that would help secure the ballot type used by ninety percent of Indiana voters.[29]

II. INDIANA HAS A COMPELLING INTEREST IN ENSURING THAT VOTERS HAVE CONFIDENCE IN THE INTEGRITY OF THE ELECTORAL PROCESS.

Voter confidence is an essential component of our representative democracy. Not only are legitimate votes diluted when voter fraud is perpetrated, but voters' confidence in the electoral process suffers harm. This confidence, when shaken, is very difficult to restore.

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[28] *Building Confidence in U.S. Elections, supra* at 21.

[29] *2006 General Election Turnout and Registration, supra.*

Photo identification laws are a reasonable, nondiscriminatory method for verifying legitimate voters and detecting fraudulent efforts. Moreover, election security measures such as Indiana's voter identification law enhance the electorate's certainty that only legitimate ballots will be cast and counted.

While the State need only demonstrate an "important regulatory interest," *Anderson*, 460 U.S. at 788, the State has a compelling interest in preserving the integrity of its election process. See *Eu*, 489 U.S. at 231; *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973). Moreover, "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell*, 127 S.Ct. at 7.

A. Voter confidence is a fundamental component of ensuring democratic participation.

The right of citizens to select their representatives is one of the bedrocks of our democracy. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry*, 376 U.S. at 17.

This Court has long recognized the importance of an electorate confident in the integrity of its election systems. "Preserving the integrity of the electoral process, preventing corruption, and sustain[ing] the

active, alert responsibility of the individual citizen in a democracy for the wise conduct of government are interests of the highest importance. Preservation of the individual citizen's confidence in government is equally important." *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 789 (1978) (internal quotes omitted).

Likewise, in *FEC v. National Right to Work Committee*, this Court recognized the dual governmental interests in "preventing both actual corruption and the appearance of corruption," 459 U.S. at 210.

A body of nationally-recognized election experts recently discussed the importance of preserving and building confidence in elections. The Commission on Federal Election Reform, co-chaired by former U.S. President Jimmy Carter and former U.S. Secretary of State James A. Baker, III, issued a detailed report on election reform efforts, titled "Building Confidence in U.S. Elections."[30]

The report identified a confident electorate as one of the keystones of a functional democracy. "Building confidence in U.S. elections is central to our nation's democracy." *Id.* at iv. The report included 87 recommendations to improve public confidence,

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[30] Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, September 19, 2005, *available at* http://www.american.edu/ia/cfer.

including a recommendation for photo identification to verify voters at polling places.

B. Voter fraud lowers public confidence in the election process.

1. Voter fraud is a serious problem in U.S. elections.

As discussed above in Section I.B, voter fraud is a problem that numerous states are grappling with in order to secure the electoral process. Additionally, the District Court below recognized numerous examples of in-person voter fraud in several states. *Indiana Democratic Party*, 458 F.Supp.2d at 793-94.

The Carter-Baker Commission on election reform acknowledged the reality of voter fraud, stating: "***there is no doubt that it occurs***." Carter-Baker Report at 18 (emphasis added). The Commission referenced several examples from the November 2004 elections. Investigators in Milwaukee, Wisconsin, found evidence of fraud, including more than 200 felons voting illegally and more than 100 people who voted twice, used fake names or addresses, or voted in the name of a dead person. This investigation revealed there were 4,500 more votes cast than voters listed. The Commission cited an estimate that over 181,000 dead people were listed on voter rolls in six swing states in the November 2004 elections. *Id.* at 4.

Since October 2002 the U.S. Department of Justice has launched more than 180 investigations into election fraud, resulting in charges for multiple

voting and providing false information on felon status. Three Kansas residents were convicted of voting in both Kansas and Missouri in the 2002 and 2000 elections. In the Milwaukee, Wisconsin investigation, four individuals were charged with multiple voting, and six people were charged with providing false information regarding their felon status, in the 2004 general elections. In Florida, 14 non-citizens, including a candidate for the state legislature, pleaded guilty or were convicted at trial of voting-related offenses.[31]

The problem of voter fraud is also judicially recognized. See *Evans v. City of Chicago*, 10 F.3d 474, 480 (7th Cir. 1993) ("Electoral fraud has been a persistent blemish on the political system of Chicago."); *Ortiz v. City of Philadelphia Office of City Com'rs Voter Registration Div.*, 28 F.3d 306, 318 (3rd Cir. 1994) (Scirica, J., concurring) ("Voter fraud, including the practice of voting dead or non-resident citizens, is no stranger to Pennsylvania. . . ."); *Nader v. Keith*, 385 F.3d 729, 733 (7th Cir. 2004) (" . . . especially in a state as notorious for election fraud as Illinois. . . ."); *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004) ("Voting fraud is a serious problem in U.S. elections. . . .").

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[31] U.S. Department of Justice press release, *Department of Justice To Hold Ballot Access and Voting Integrity Symposium*, August 2, 2005.

Even a cursory review of recent headlines demonstrates the existence of voter fraud. An investigative reporter in Pittsburgh discovered 9,000 deceased voters still registered, with 16 of them voting in recent elections. Rick Earle, *Ghost Voters Cast Ballots In Pittsburgh Elections*, WPXI, November 1, 2007. A husband and wife in California pleaded no contest to a misdemeanor charge of fraudulently voting in an election they were not legally registered. Walter Yost, *Couple sentenced for voter fraud in bond election*, SACRAMENTO BEE, November 5, 2007. Two county elections workers in Ohio were convicted for rigging a ballot recount during the hotly contested 2004 presidential election. Jim Nichols, *Ohio: Election Workers Convicted*, NEW YORK TIMES, January 25, 2007. In an attempt to prove the "system is flawed," a Washington woman registered her dog to vote. Neil Modie, *Canine removed from voter rolls*, SEATTLE POST-INTELLIGENCER, July 11, 2007. A circuit judge in Mississippi found voter irregularities including a vote cast for a dead man and a vote by a man who was in the hospital on election day. Editorial, *Voter fraud in Jeff Davis demands reform*, HATTIESBURG AMERICAN, October 27, 2007. A campaign worker in St. Louis submitted bogus signatures – including those belonging to dead voters – in an unsuccessful attempt to force a recall vote. Jake Wagman, *Campaign worker plead guilty to fraud*, ST. LOUIS DISPATCH, November 8, 2007. An investigation by Mississippi officials revealed that votes were cast for at least three dead people in a recent election. Residents of a single nursing home were registered in six different

precincts. At least three convicted felons and one incarcerated individual were allowed to cast votes. Two votes were also cast by persons not registered as U.S. citizens. Peter Thomas, *Judge calls for special election*, THE TUNICA TIMES, November 5, 2007.

The result of these news stories is an "appearance of corruption stemming from the public awareness of the opportunities for abuse," *Buckley v. Valeo*, 424 U.S. 1, 27 (1976), and debunks Petitioners' claim that Indiana "stoked" public fears with a "propaganda" campaign.[32] A single fraudulent vote can be reported by news media to thousands of honest voters and can shake public confidence if adequate measures are not taken to preserve the integrity of the election process.

2. Voter fraud and the appearance of fraud harm the public confidence in election integrity.

Voter fraud – whether real or perceived, widespread or isolated – has a debilitating effect on lawful participation. The primary concern with voter fraud is that it effectively cancels out legitimate voters. *Reynolds*, 377 U.S. at 555. The results of close elections can be thrown by just a few illegitimate votes.

Moreover, this Court has recognized that the eroding of public confidence through the *appearance*

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[32] Pet. at 55.

of corruption directly implicates the "integrity of our electoral process." *FEC v. National Right to Work Committee*, 459 U.S. at 208 (quoting *United States v. UAW*, 352 U.S. 567, 570 (1957)).

The mere appearance of wrongdoing can negatively impact public confidence, as this Court wrote when upholding the provisions of the Hatch Act. "[I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent." *U.S. Civil Service Commission v. National Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973).

When voter fraud is discovered, it is often widely reported in news reports and discussed by legislative bodies. Conscientious voters who pride themselves on civil involvement are unlikely to overlook this problem. "Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell*, 127 S.Ct. at 7.

Citizen participation is crucial to our form of representative democracy. The Carter-Baker Commission acknowledged the devastation that could occur if honest voters doubt the legitimacy of elections and decline to participate. "Democracy is endangered when people believe that their votes do not matter or are not counted correctly." Carter-Baker

Report at 1. "Little can undermine democracy more than a widespread belief among the people that elections are neither fair nor legitimate." *Id.*

Numerous studies, surveys and polls demonstrate the price electoral fraud (or its appearance) exacts from the voting public.

A 2004 Rasmussen Reports survey showed that 58 percent of American voters were worried another Florida-style mess could mar the 2004 election (including 29 percent who are "very worried" about such a possibility).[33]

The Pew Research Center asked November 2004 voters about their confidence that votes across the country were accurately counted. A minority of voters were "very confident" (48 percent), while 51 percent expressed some doubt (37 percent "somewhat confident," 7 percent "not too confident," and 7 "not at all confident").[34] The Pew Center asked a similar question two years later, just before the November 2006 elections. Only 27 percent of those surveyed were "very confident" votes would be accurately counted, and 69 percent expressed doubt (37 percent

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[33] Rasmussen Reports, *58% Worried About 2004 Voting Debacle*, October 19, 2004, *available at* http://www.rasmussenreports.com/public_content/politics/election_2004/58_worried_about_2004_voting_debacle.

[34] Pew Research Center for the People & the Press, *Voters Liked Campaign 2004, But Too Much 'Mud-Slinging,'* November 11, 2004, *available at* http://people-press.org/reports/display.php3?ReportID=233.

"somewhat confident," 17 percent "not too confident," 15 percent "not at all confident").[35]

A 2006 study examining the attitudes of the American public concerning elections found there was a decline in confidence among voters from 2005 to 2006 that their vote in 2004 was counted accurately. The authors of the study attributed the decline to a prospective concern that votes in 2006 might not be counted accurately.[36]

Washington state's 2004 gubernatorial election opened the state's election processes to scrutiny by election officials, journalists, and citizen investigators, as discussed above in Section I.B. After the election, registered voters in Washington were surveyed by a public affairs agency and asked, "Do you have more confidence, less confidence, or about the same amount of confidence in the election process as a result of the gubernatorial controversy?" In May 2005 only 26 percent reported more or the same amount of confidence in the election process, while a majority – 61 percent – reported "less confidence."[37]

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[35] Pew Research Center for the People & the Press, *Who Votes, Who Doesn't and Why*, October 18, 2006, *available at* http://people-press.org/reports/display.php3?ReportID=292.

[36] R. Michael Alvarez, Thad E. Hall & Morgan Llewellyn, *American Confidence in Electronic Voting and Ballot Counting: a Pre-Election Update*, November 3, 2006, *available at* http://vote.caltech.edu/reports/2006-Voter-Confidence-Survey.pdf.

[37] Strategic Vision, *Poll Results – WA*, May 2005, *available at* http://www.strategicvision.biz/political/washington_poll_0520.htm.

This low confidence level persisted nearly two years after the 2004 election, demonstrating the difficulty of overcoming voter distrust after fraud or inept election management are discovered. Washington voters were asked: "Are you confident that Washington has overcome the problems that hindered the 2004 Election and that there will be no problems with the 2006 Election?" Voters overwhelmingly indicated low confidence: in August 2005 (73 percent "no" and 17 percent "yes"), in February 2006 (71 percent "no" and 16 percent "yes"), and in September 2006 (70 percent "no" and 14 percent "yes").[38]

These results suggest it is good public policy to adopt security measures *before* voter fraud scandals erupt, as this Court has recognized. See Section I.C *supra*. Delaying legislative action until after fraud is perpetrated may result in damage not easily repaired.

C. Indiana's interest in voter confidence is advanced by the photo identification law.

Indiana's photo identification law is a reasonable method for verifying legitimate voters. States inevitably

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[38] Strategic Vision, *Poll Results – WA*, August 2005, *available at* http://soundpolitics.com/SV_WAAugust.pdf; Strategic Vision, *Poll Results – WA*, Feb. 2006, *available at* http://www.strategicvision.biz/political/washington_poll_021506.htm; Strategic Vision, *Poll Results – WA*, Sep. 2006, *available at* http://www.strategicvision.biz/political/washington_poll_092806.htm.

must adopt regulations to secure the ballot, and photo identification laws ensure that ballots are cast by legitimate voters. Election security measure such as Indiana's photo identification law tend to enhance public confidence in ballot integrity.

1. The state may verify voter identifications to secure the ballot.

States are given wide latitude to regulate the order and security of the election process. See *Smiley*, 285 U.S. at 366 (states may "provide a complete code for . . . prevention of fraud and corrupt practices . . . "); *Storer v. Brown*, 415 U.S. 724, 730 (1974) ("Moreover, as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes."); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) ("States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.")

Every election provision "inevitably affects – at least to some degree – the individual's right to vote and his right to associate with others for political ends." *Anderson*, 460 U.S. at 788. "Nevertheless, the state's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Id.*

It is essential for secure elections that each voter cast only one ballot, and that only legitimate voters

vote. One reasonable means to accomplish this is to require the production of photo identification.

2. National election experts recommend photo identification.

The Carter-Baker Commission on Federal Election Reform recognized the potential for voter fraud, and the bi-partisan Commission recommended that states require voters to use photo identification "[t]o ensure that persons presenting themselves at the polling place are the ones on the registration list," Carter-Baker Report at 21.

The Commission rejected the argument that photo identification should be completely abandoned. "The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." *Id.* at 18. Addressing the concern that photo identification may present a barrier to voting, the Commission recommended that government-issued photo identification be made available without expense and that states proactively assist individuals in registering to vote and obtaining identification.

The Commission also discussed one of the positive consequences of a photo identification requirement: voter confidence. "A good ID system could deter, detect, or eliminate several potential avenues of fraud – such as multiple voting or voting by individuals using the identities of others or those who are deceased – and thus it can enhance confidence." *Id.*

3. Photo identification laws enhance voter confidence.

Not only do photo identification laws help deter and detect fraudulent votes, the measures tend to enhance voter confidence. Numerous studies and polls indicate support among voters for measures that improve election security, including photo identification laws.

A 2006 survey conducted for the Wall Street Journal and NBC News asked whether voters should be required to show valid photo identification when they vote. Eighty-one percent of those surveyed supported the requirement, seven percent opposed it, and twelve percent were neutral.[39]

Gauging public sentiment about election security after the 2004 Washington gubernatorial election, the Evergreen Freedom Foundation commissioned a statewide survey of registered voters. Participants were asked whether they agreed with the statement: "Any person desiring to vote in person at a polling station in any election must present valid photo identification prior to signing the poll book." Eighty-seven percent of participants supported the statement (66

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[39] NBC/WSJ Study #6062, April 2006, *available at* http://msnbcmedia.msn.com/i/msnbc/sections/news/060424_NBC-WSJ_Poll.pdf.

percent "strongly support" and 21 percent "somewhat support") with only 12 percent opposing.[40]

A joint study of voters in Colorado and New Mexico found that voters see a positive link between photo identification laws and election security.[41] Voters in Colorado were asked several questions about voter identification rules. Nearly three-quarters (74.5 percent) of registered voters thought voter identification rules help prevent voter fraud (13.8 percent disagree). A majority of voters acknowledged this link regardless of their party affiliation (Democrat, Independent, Republican).[42]

Voters were then asked a polarizing question about the voter identification debate, "Some people argue that voter identification rules prevent some voters from going to the polls, while others argue that voter identification rules prevent voting fraud. Which is more important? Ensuring that everyone who is eligible has the right to vote or protecting the voting

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[40] Dresner, Wickers & Associates, *Washington Statewide Survey*, January 30, 2006, *available at* http://www.effwa.org/files/pdf/Washington_Statewide_Survey.pdf.

[41] Lonna Rae Atkeson, *The 2006 Colorado Seventh Congressional District Registered Voter Election Administration Report*, August 2007, *available at* http://vote2006.unm.edu/COsummary.htm; R. Michael Alvarez, Lonna Rae Atkeson & Thad E. Hall, *The New Mexico Election Administration Report: The 2006 November General Election*, August 2, 2007, *available at* http://vote2006.unm.edu/NM_Election_Report.pdf. The authors of the studies submitted an *amicus curiae* brief in support of Petitioners.

[42] Atkeson at 8.

system against voter fraud?" Half of those interviewed (50.4 percent) supported voter identification in order to protect the system against fraud; 40.4 percent thought it was more important to ensure everyone who is eligible has the right to vote. *Id.* at Table 13.

Voters in New Mexico were asked the same questions, and 7 in 10 registered voters (69.9 percent) believe voter identification laws help prevent voter fraud (16.7 percent disagree), with strong majorities across political party lines.[43] Asked whether election security or access to the polls is more important, over half (52.2 percent) of the New Mexico participants supported voter identification, while 41.4 percent thought it was more important to ensure everyone who is eligible has the right to vote. *Id.* at 60.

III. OTHER STATES ARE CONSIDERING PHOTO IDENTIFICATION AS A USEFUL ELECTION SECURITY MEASURE.

Petitioners indicate Indiana's photo identification law "departs from usual and customary regulations adopted elsewhere,"[44] but in reality Indiana is one among many states in the process of upgrading election security requirements. A quick perusal of voter-verification laws and recent legislation in other states reveals the commonality of Indiana's law.

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[43] Alvarez at 59.

[44] Pet. at 29.

A. States that require voters to show photo identification.

In addition to Indiana, Georgia and Florida require voters to show photo identification. Florida requires in-person voters to provide a current and valid picture identification with a signature. Fla. Stat. § 101.043.

After a lengthy legal battle, Georgia now requires voters to show photo identification when voting in person. Ga. Code Ann. § 21-2-417 (upheld by *Common Cause/Georgia v. Billups*, 504 F.Supp.2d 1333 (N.D. Ga. 2007).

B. States that request voters to show photo identification.

Other states request in-person voters to show photo identification. Those without the proper ID may complete an affidavit in lieu of identification and cast a ballot.

Hawaii requires voters to provide identification if so requested by a precinct official. Haw. Rev. Stat. § 11-136. Louisiana requires voters to present a Louisiana driver's license, a Louisiana special identification card or other generally recognized picture identification card that contains the person's name, address, and signature. La. Rev. Stat. Ann. § 18:562.

Michigan requires voters to present an official state identification card or other generally recognized picture identification card before receiving a ballot.

Mich. Comp. Laws § 168.523. The state's photo identification requirement was upheld as constitutional in an advisory opinion by the Supreme Court of Michigan. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444 (Mich. 2007). The law, passed in 1996, was not enforced by the Secretary of State after an Attorney General opinion questioned the constitutionality. *Id.* at 448. Subsequent national attention on the issue of voter fraud prompted the Michigan House of Representatives to request an advisory opinion of the state Supreme Court regarding whether the photo identification requirements violated either the Michigan Constitution or the United States Constitution. The court held that it did not. "The identification requirement is a reasonable, nondiscriminatory restriction designed to preserve the purity of elections. . . ." *Id.*

In South Dakota, all voters are required to provide identification before voting or obtaining an absentee ballot. S.D. Codified Laws § 12-18-6.1. Acceptable forms of photo identification include a South Dakota driver's license or nondriver identification card, a passport or identification card issued by an agency of the United States government, a tribal identification card, a current student identification card issued by a high school or institution of higher education located within the state.

C. Congress and many states have considered photo identification requirements.

In addition to the above states that require or request photo identification for voting, numerous state legislatures and Congress have considered legislation that would require a voter to present photo identification to vote.

In 2006 the House of Representatives passed the Federal Election Integrity Act, requiring each individual who desires to vote in an election for Federal office to provide the appropriate election official with a government-issued photo identification. The bill was enacted in the House but died in the Senate. Federal Election Integrity Act, H.R. 4844, 109th Congress (2006).

Several states have passed photo identification requirements in one or more legislative branches. The Kansas Senate passed a bill requiring voters under age 65 to show photo identification to cast a ballot. S.B. 169, 2007 Reg. Sess. (Kan. 2007). The Minnesota House of Representatives passed a bill requiring voters to show a "picture identification card or document" before voting. H.F. 1443, 84th Leg. Sess. (Minn. 2006). The Mississippi Senate enacted a bill requiring voters to present a photo or government-issued ID. S.B. 2617, 2007 Reg. Sess. (Miss. 2007). The Wisconsin Legislature twice passed a bill requiring photo identification for in-person voting, both of which Wisconsin Governor Jim Doyle vetoed. A.B. 111, 2003

Reg. Sess. (Wi. 2003); S.B. 42, 2005 Reg. Sess. (Wi. 2005).

Other state legislatures that have recently considered photo identification proposals include: Alabama, Arkansas, California, Illinois, Iowa, Maine, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, and Washington.[45]

Indiana is certainly not alone in promulgating reasonable, nondiscriminatory regulations to prevent voter fraud.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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[45] See National Conference of State Legislatures, Election Reform Legislation, at http://www.ncsl.org/programs/legismgt/elect/elections.cfm.